



Game (Almost) Over: A Damages Expert's Perspective on Income Losses in Sport

BY SHALABH GUPTA, AMRAN NAWAZ, AND CHRIS KAVANAGH

March 2025

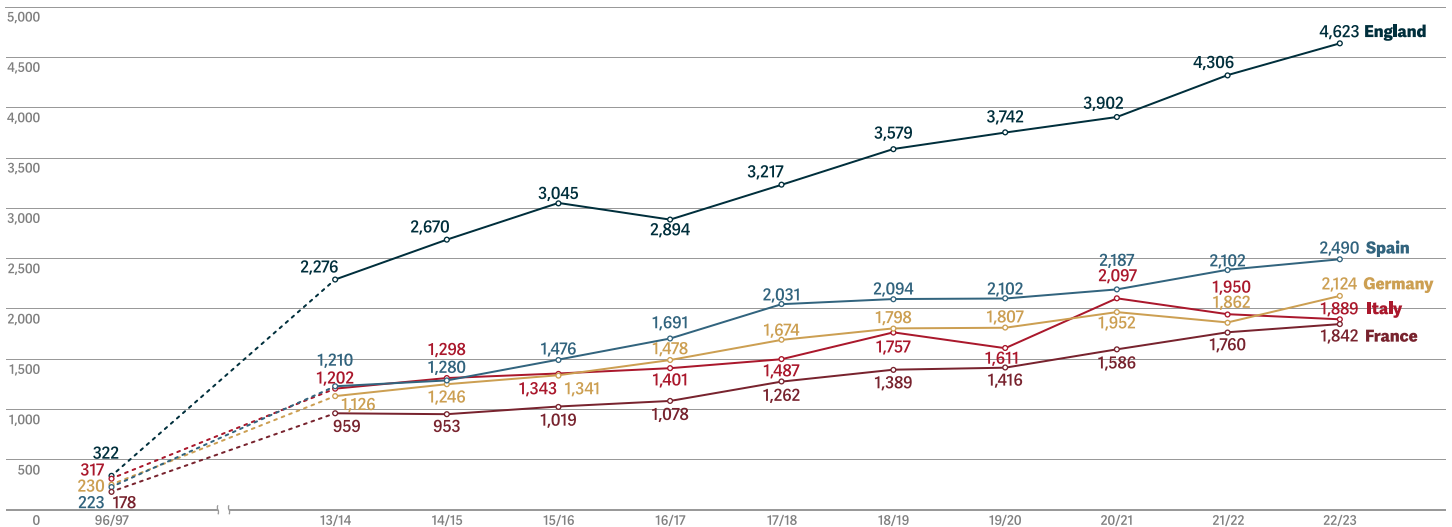
Introduction

The popularity and value of sports leagues and teams have grown exponentially in recent decades, and athletes' earnings have reached unprecedented heights. For example, wage costs in European football leagues have increased by 10x (in France) to 14x (in England) over the past three decades.¹

This surge in earnings has led to an increase in litigation and arbitration when athletes face career-impacting or career-ending events.

In recent news, the Court of Justice of the European Union (CJEU) ruled that specific provisions of the FIFA regulations violated EU law. The ruling was based on a case in 2014 when Lokomotiv Moscow brought a claim against Lassana Diarra (a former footballer) for his alleged unjust contract termination. Diarra's career was halted pending the initial ruling, derailing his career. The ruling will have ramifications for players, clubs, and the entire football transfer system.²

Figure 1: "Chart 4: 'Big Five' European League clubs' wage costs – 1996/97 and 2013/14 to 2022/23 (€m)"¹



1. [Deloitte Annual Review of Football Finance 2024. Wage costs](#). Wage costs include wages, salaries, signing-on fees, bonuses, termination payments, social security contributions and other employee benefit expenses.
 2. [Diarra vs FIFA's RSTP – Bosman 2.0?](#), Morgan Sports Law.

This article dives into the ever-growing area of personal injury damages in sports and the economic theory behind it. We discuss current and historical cases from the United Kingdom, United States, Canada and the Court of Arbitration for Sport, their applicable judgements, and how a damages expert's evidence (or lack thereof) can impact the monetary damages an athlete may be awarded.

The Fundamentals of Economic Losses

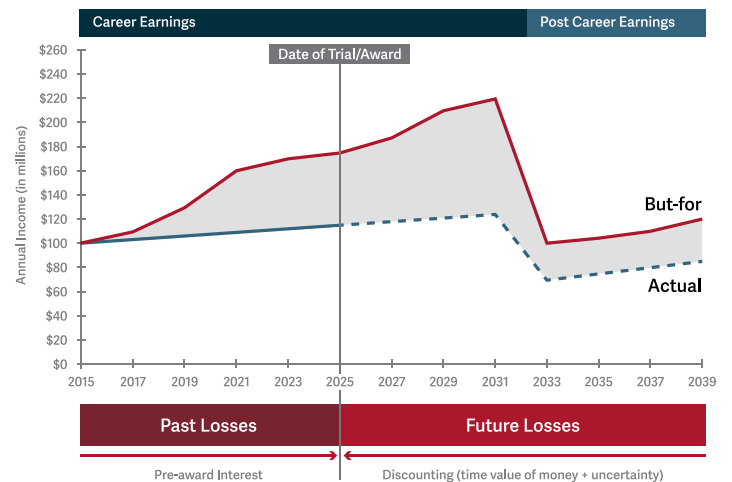
Economic losses impacting individuals can arise in several situations, including personal injury, wrongful termination, and breach of contract.

A trier of fact may award monetary and/or non-monetary awards when an economic loss event occurs. Damages experts with experience in finance, accounting, economics, valuation and the quantification of economic damages are generally involved in the quantification of monetary damages,³ which typically consist of one of the following:

- Compensatory (or Special) Damages – damages that aim to restore the plaintiff to the same position they would have occupied had the event(s) that caused economic losses to the plaintiff not occurred.
- Restitution (or Disgorgement) Damages – damages that aim to make a defendant give up profits or benefits it earned through wrongful means.

In personal injury matters, monetary damages typically consist of income losses, which are calculated as the income that the individual would have earned over their work-life expectancy, absent or 'but-for' the incident that caused the injury, less the income that the individual earned since the incident and is expected to earn in the future, as illustrated in the graphic below. Income losses are divided into two time periods: past losses occur from the date of the injury to the date of the trial/award, and future losses are the losses which are expected to occur from the date of the trial/award to the date the individual is expected to retire.

Figure 2: Illustrative Example of Economic Loss



Thus, the key elements that must be determined in the calculation of past and future income losses are:

- A) The individual's estimated earnings absent the injury from the date of the injury over their estimated remaining work-life expectancy. The relevant factors are case-specific and will typically consider the individual's age, life expectancy, work experience, historical earnings, expected career trajectory, employment contracts, retirement age, and economic conditions. This analysis would include an assessment of contemporaneous contracts, agreements, and other relevant documents available prior to the injury, as well as an assessment of comparable competitors or athletes.
- B) The individual's actual earnings from the date of the injury to the date of the assessment and their estimated actual earnings thereafter over their remaining work life expectancy given their injury. The relevant factors are the same as above but will also include assumptions, typically based on expert medical or vocational opinions, concerning the individual's prognosis for recovery and their ability to obtain alternative employment to mitigate their losses.

A claim for economic losses must adequately assess and reflect the above considerations relevant to the case to assist the trier of fact in their determination.

3. Damages experts are not typically involved in non-monetary awards, as they relate to matters at the judge's discretion, such as pain and suffering.

Claims for Economic Losses in Sports

We have identified several examples of substantiated and unsubstantiated claims for economic losses in sports-related disputes. Unsurprisingly, the unsubstantiated claims were not awarded a favourable result for the plaintiff.

For example:

- Dr. Dorofeyeva (a sports medicine specialist) was ruled to be ineligible to practice for a period of four years for violating the International Tennis Federation's (ITF) anti-doping policy by advising a professional tennis player to take a product which contained a banned substance. In Dr. Dorofeyeva's appeal, she sought compensatory damages of €150,000 and punitive damages of €250,000. The arbitrator found "...that the claims submitted by [Dr. Dorofeyeva] are completely unsubstantiated... [Dr. Dorofeyeva] neither submitted any evidence nor a skeleton calculation how she derived the figures claimed. Already for these reasons the claims must be dismissed."⁴
- A sports agent lodged a claim against Bologna FC for not making an agreed-upon bonus payment of €4,000,000 upon the successful transfer of a soccer player. Mr. Pineiro requested payment of the bonus and an unspecified amount of monetary damages. The tribunal ultimately found that the club was liable to pay €2,000,000, plus interest. However, "...the Agent's request for 'monetary damages' was not supported by convincing evidence, and therefore, such request should be dismissed."⁵

- A court justice was unable to use the evidence of an expert witness in quantifying the losses to an eighteen-year-old playing for Manchester United Football Club, as he found the expert's opinion to be "*somewhat anecdotal and subjective in nature*". The justice also found the tone of the expert's evidence to be unmeasured in their criticisms of other evidence.⁶

Conversely, when claims for economic losses are adequately substantiated, the awards can be significant. In a medical malpractice claim brought against a defendant relating to the treatment of a knee injury, which ended Mr. Maragos' career, the plaintiff's economic losses were assessed at \$9 million, "...evidenced by his contract at the time of his injury as well as a reasonable projection for a future contract had he continued to play."^{7,8}

Case Study - A Deep Dive into an Athlete's Personal Injury Losses

The case of *Michael Appleton v. Medhat Mohammed El Safty* provides a comprehensive example of how courts assess the economic losses of an athlete. Mr. Appleton, a professional European football player, sustained a partial tear in his right knee, which led to the defendant advising Mr. Appleton to have reconstructive surgery, which the defendant then negligently carried out. Mr. Appleton sought £7 million in losses.⁹

Justice Clarke provided a detailed assessment of the damages suffered by Mr. Appleton based on the joint report provided by both parties' experts. The table below highlights some key considerations and how they impacted Justice Clarke's decisions.

4. [Dorofeyeva v. International Tennis Federation, \(CAS 2016/A/4697\)](#), Paragraph 94.

5. [Bologna FC 1909 S.p.A. v. Gonzalo Luis Madrid Pineiro \(CAS 2016/A/4517\)](#), Paragraphs 12, 14 and 70.

6. [Benjamin Collett v. Gary Smith \(EWHC 1962 \(QB\)\)](#), Paragraph 89.

7. [Maragos v. Bradley, Non-precedential decision \(S.C. Pennsylvania 2023\)](#), Page 11.

8. Mr. Maragos further received "approximately \$36 million for noneconomic damages such as pain and suffering", bringing his total claim to \$43.5 million. Source: Law360 article, "[Pa. Court Affirms Ex-Eagle's \\$43.5M Knee Injury Verdict](#)", August 2024.

9. [Appleton v. El Safty \(EWHC 631\(QB\)\)](#), Paragraphs 1-2.

Appleton v. El Safty (EWHC 631(QB))

Consideration	Claimant's Expert	Defendant's Expert	Justice Clarke's Decision	Justice Clarke's Reasoning
Estimating future playing time after expiry of the current contract ¹⁰	Either 1) Mr. Appleton would remain with West Bromwich Albion FC, or 2) Mr. Appleton would have moved to another established club in the Premier League.	Mr. Appleton would not have continued at the <u>same level</u> for more than three years.	Accepted Defendant's Expert's Position.	There was not "any real or substantial chance of the claimant transferring to another Premiership club at that stage given his history and prognosis."
Sign-on fee and salary under another premiership club scenario ¹¹	A signing fee of £100,000 per year and a £500,000 salary increasing by £50,000 each year.	£450,000, increasing by £50,000 each year, would be appropriate.	Preferred the Claimant Expert's position.	It was unclear whether the Defendant's expert's estimate included a signing fee. Further, there were inconsistencies among the Defendant's expert's oral evidence, cross-examination and re-examination.
Estimated appearances ¹²	No details given in the Claimant Expert's opinion.	Estimated at 70%, declining to 60% over the next three seasons.	Independent decision of 85%.	Found the Defendant's position too pessimistic and based decision on Mr. Appleton's appearance history from the prior season.
Personal bonus ¹³	Personal bonus of up to £3,000 per match based on a similar agreement for another player.	No details given in the Defendant Expert's opinion.	Independent decision that Claimant would not receive a personal bonus.	Based on evidence that, West Bromwich Albion FC only awarded personal bonuses to lower-paid players, which Mr. Appleton was not.
Career progression post-retirement ¹⁴	Mr. Appleton would become a manager in the premiership after retirement at age 31.	No details given in the Defendant Expert's opinion.	Independent decision to award a lump sum of £60,000.	Opined that the Claimant's chances were very low, citing that there are only 92 managerial jobs in the professional leagues, with low vacancies and fierce competition, and Mr. Appleton would have been young and inexperienced.

Conclusion

Successfully claiming economic losses in sports requires a comprehensive assessment of an athlete's financial and career trajectory. Given the multiple income sources, fluctuating earnings, and the complexities of projecting income in the absence of an injury, a detailed and robust quantification is critical. The cases of Mr. Appleton and

Mr. Maragos highlight that well-substantiated expert reports, incorporating all relevant economic factors, can assist in supporting the quantum of losses claimed. By applying rigorous and transparent methodologies, damages experts not only support fair compensation but also enhance the credibility and reliability of financial claims in legal proceedings.

10. Ibid, paragraphs 106 – 109.

11. Ibid, paragraphs 122 – 127.

12. Ibid, paragraphs 112 – 114.

13. Ibid, paragraphs 117 – 118.

14. Ibid, paragraph 167 – 172.



Shalabh Gupta
ASSOCIATE DIRECTOR
 sgupta@secretariat-intl.com

Shalabh has provided financial analyses, economic advisory, forensic accounting, quantification of damages and other litigation support services to clients and their counsel for 10 years. He is a Chartered Accountant (CA), a Certified Fraud Examiner (CFE), and a Chartered Business Valuator (CBV).



Amran Nawaz
ASSOCIATE DIRECTOR
 anawaz@secretariat-intl.com

Amran has more than 8 years of experience in accounting and financial consulting, with specializations in the quantification of damages and valuations in the context of commercial and investment disputes. He is a Chartered Professional Accountant (CPA, CA) and a Chartered Business Valuator (CBV).



Chris Kavanagh
SENIOR ASSOCIATE
 ckavanagh@secretariat-intl.com

Chris has over 4 years of experience in damage quantification, financial analysis, litigation support and business valuation services. He is a Chartered Professional Accountant (CPA) and a Chartered Business Valuator (CBV).



SECRETARIAT PROVIDES INDEPENDENT EXPERT SERVICES

including the preparation of expert reports and providing expert testimony with respect to damages and financial issues. Our bright minds and passionate problem-solvers are well placed to assist with compliance of, or issues arising from, the evolving financial regulations.

At Secretariat, our experts bring the in-depth knowledge and expertise in accounting, finance and economics necessary to present clear and concise economic evidence to regulators, arbitrators and judges in clearly worded, well-reasoned and supported expert reports. We develop sound and compelling analysis, test theories, evaluate strategies, quantify damages and form opinions — all with the independence and quality that stands up to the rigors of the largest, most complex matters.

We would like to hear from you

info@secretariat-intl.com
secretariat-intl.com

